

**CENTERS FOR MEDICARE AND MEDICAID SERVICES**  
**Hearing Officer Decision**

**In the Matter of**

Piedmont Community HealthCare, Inc.	*	
	*	Docket No. 2010 C/D App 6
Denial of Initial Application, H1659	*	
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**ORDER DENYING SUMMARY JUDGMENT**

**Jurisdiction**

This appeal is provided pursuant to 42 C.F.R. §422.660. The Centers for Medicare and Medicaid Services (CMS) Hearing Officer designated by the CMS Administrator to hear this case is the undersigned, Paul Lichtenstein.

**Issue**

Whether CMS' denial of the Applicant's MA-PD initial application for calendar year 2011 was consistent with the requirements of 42 C.F.R. §§422.501 and 422.502.

**Statutory and Regulatory Background**

The Social Security Act (SSA or the Act) authorizes CMS to enter into contracts with entities seeking to offer Medicare Advantage (MA) benefits (Part C) and Medicare outpatient prescription benefits (Part D) to Medicare beneficiaries. SSA §§1857 and 1860D-12. Pursuant to 42 C.F.R. §§422.500 and 423.500 *et seq.*, CMS has established the general provisions for entities seeking to qualify as Medicare Advantage-Prescription Drug (MA-PD) plans. MA organizations offering coordinated care plans (CCPs) must offer Part D benefits in the same service areas. 42 C.F.R. §422.4(c)(1).

If CMS denies an MA-PD applicant, they have a right to a hearing before a CMS Hearing Officer under 42 C.F.R. §§422.660(b) and 423.650(b). Under the current Part D regulations at §§422.660(b)(i) and 423.650(b)(i), state, at hearing, the applicant has the burden of proving by a preponderance of the evidence that CMS' determination was inconsistent with the requirements of §§422.501 and 422.502.

The regulations at 42 C.F.R. §422.684(b) and 423.662(b) state that either party to the hearing may ask the hearing officer to rule on a motion for summary judgment.<sup>1</sup>

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<sup>1</sup> See 72 Fed. Reg. 68700, 68714, 68725 (December 5, 2007). The preamble to the Final Rule further explains that "In ruling on such a motion, we propose that the hearing officer would be bound by the CMS

### **Factual and Procedural Background**

In late February 2010, Piedmont Community HealthCare, Inc. (the Applicant) timely filed with CMS initial applications for approval to offer MA-PD products in the Commonwealth of Virginia beginning January 1, 2011. On June 7, 2010, the Applicant received a Notice of Denial of its application due to problems with its network of providers. The Applicant filed a timely appeal of the denial.

On July 9, 2010, CMS filed a Motion for Summary Judgment and a Memorandum and Motion for Summary Judgment in Support of its Denial of Piedmont Community HealthCare, Inc. MA-PD Applicant. The basis of CMS' motion is that the Applicant failed to submit evidence that it had a network of contracted outpatient dialysis facilities sufficient to provide access to covered services in the counties it requested to cover under its application.

On July 9, 2010, the Applicant submitted a Memorandum in Support of Appeal of Contract Determination. The Applicant states that it did not request an exception to the network adequacy requirements for outpatient dialysis services due to its belief that it was unqualified to request an exception pursuant to CMS' application instructions.

CMS' brief, which was filed on the same day, did not address the specific matter raised in the Applicant's brief.

### **Decision**

At this stage, the Hearing Officer finds that the papers have not clearly resolved the issues in this matter in favor of either party and that additional legal argument (and testimony) should be considered. Therefore, the Hearing Officer denies CMS' Motion for Summary Judgment.

### **Conclusion**

CMS' Motion for Summary Judgment is denied.

Paul Lichtenstein  
Hearing Officer

Date: July 9, 2010

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regulations and general instructions. Where no factual dispute exists, the hearing officer may make a decision on the papers, without the need for a hearing."